HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 881 of 2001
Old No. 173 of 1984

State of U.P. through the Collector,
Dehradun

…**Appellant.**

Versus

1. Maharani Durga Kumari, W/Olate Maharaj Rajendra Prakash, R/O Sirmour Tea Estate, Dehradun,
2. UdaiPrakash, adopted son, late Maharaja Rajendra Prakash, R/O Sirmour Tea Estate Dehradun (claimants)

…**Respondents.**

Sri Nand Prakash, Learned Standing Counsel for the appellant.
None appears for the respondents.

Dated June 15, 2006.
P.C.:Hon. B.S. Verma, J.

This appeal arises out of the judgment and award dated 19-12-1983, passed by the then Additional District Judge, Dehradun ***(in short the Judge)*** in Land Acquisition Reference Case No. 92 of 1979, Maharani Durga Kumari and another vs. Collector, Dehradun whereby the learned Judge partly allowed the reference and awarded compensation to the claimants fixing he market value of the acquired land @ Rs.. 5,500/- per Bigha along with solatium @ 15% and interest @ 6% per annum from the date of possession till payment, as mentioned in the impugned order. It may be noted that the learned Judge has decided four references, namely, L.A. Case No. 91 of 1979, L.A. Case No. 92 of 1979, Smt. Durga Kumar and another Vs. Collector, ***(the present case)*** L.A. Case No. 123 of 1980, Smt. Padamini Devi Vs Collector and L.A.Case No. 124 of 1980, Smt. Durga Kumari and another Vs. Collector, by a common judgment.

Relevant facts of the case are that the acquired land belonged to Bhumidhari land measuring 10.15 acres situate in village Chaibagh, Kaulagarh, Pargana Pachwa Doon, district Dehradun for the purpose of setting up Soil Conservation Laboratory, offices and

residences of the employees. The adjoining land measuring 48 acres situate towards west was acquired for setting up offices of the Survey of India and residences of the employees. Notification under Section 4(1) of the Land Acquisition Act (***for short the Act***) was published in the official Gazette on 8-9-1972 followed by Notification under Section 6 on 16-12-1972. Possession of the land was taken on 6-6-1974. Two separate awards were given by the Land Acquisition Officer (***for short L.A.O.***), which were based on the same grounds. The L.A.O. being unable to decide as to who were entitled to compensation and for what area, therefore, the reference was made to the Reference Court under Section 30 of the Act.

From the lower court record, it comes out that the reference was made under Section 18 of the Act in respect of 10-15 acres of land, which had been acquired for the purposes of Soil Conservation Department on the objection of the claimant Padmini Devi, resident of 187, Golf Links, New Delhi. The L.A.O. after taking into consideration the material on record in the light of the provisions of the Act ultimately held that the landowners were entitled to compensation of land @ 6751-54 P. per acre and therefore, gave award dated 27-3-1979 for total acquired land to the tune of Rs. 77,647-57. Dissatisfied with the compensation awarded by L.A.O., the claimants moved to the Collector for making reference under Section 18 of the Act alleging that they are the owners of the entire land measuring 10.15 acres under acquisition pertaining to village Chay Bagh, Kaulagarh and some other pleas were also raised by them and it was urged that the market value of the land under acquisition was not less than Rs. 10,000/- per Bigha.

The Collector filed written statement before the reference court and denied the ownership of the mother of the applicant as alleged and all material allegations were also denied. In the additional pleas it was stated that the claimants had not disclosed

their share and the value of the property. The award given by the L.A.O. was supported by saying that the compensation is reasonable, adequate and represents the fair market value of the acquired land.

The learned Reference Court framed necessary issues.

The claimants examined Prithipal Singh an architect and colonizer of Dehradun as A.W.1, who has stated that the location of the acquired land with its necessary details. He has stated that he wanted to purchase the disputed land about ten years prior to the date of his statement on 25.11.1982 @ Rs. 10,000/- per Bigha, but the matter could not be reconciled. From the side of the appellant-Collector, Dr. Raj Tilak was examined, who was Superitending Zoologist Dehradun from 1972 to 1975 in the Zoological Survey of India for which land was acquired. He has stated that he saw the spot and adjoining to the land under acquisition, land for Soil Conservation Office was acquired. Both the lands were part of the one and same plot. According to him the land was undeveloped. Both these witnesses have not given any positive evidence on the point of market value of the land. The reference court has therefore determined the market value on the basis of the sale transactions, which were found relevant and proper for the purpose of market value of the acquired land.

In this appeal, the judgment and decree of the reference court has been assailed mainly on the ground that the award of the reference court is not in accordance with the provisions of the Act. It was asserted that the sale deeds filed by the claimant were forged and fabricated and it has been alleged that the reference court has not considered the sale –deeds, which represented the fair market value.

I have heard learned Standing Counsel for the State and perused the material available on record including the lower court record.

The only point pressed for consideration on behalf of the appellant is that the reference court erred in not considering the relevant sale exemplars, while fixing the market value. The submission of the learned Standing Counsel is not tenable for the following reasons.

At the out set, beside the evidence led by the parties, the learned District Judge made local inspection of the acquired land on 22.2.1983 in the presence of learned counsel for both the parties.

According to the claimant, compensation for the land acquired could have been valued @ at least Rs. 13,000/- per bigha and even after deduction of 25% towards largeness, the market value could not have been less than Rs. 10,000/- per bigha. It is admitted that notification under Section 4 of the Act was published on 8-9-1972. The reference court has observed that “the adaptability of land for building purposes is an important consideration while determining the compensation. Apart from it, the gradual rise in prices is another important factor, which has to be taken judicial notice of. It is pertinent to mention that claimants examined two witnesses before the Land Acquisition Officer and Prithipal Singh before the reference court. The L.A.O. had rejected the testimony of the two witness Sunder Lal and Prem Lal, for the reason that there was no cogent evidence of their being property agents and because the plots sold by them were small piece of land. According to A.W.1 Prithipal Singh the land was levelled. After having examined the evidence on record in its entirety, the reference court came to the conclusion that the acquired land had great potential value for conversation into posh residential complex because of its proximity with flourishing offices and complexes, meaning thereby that all material facilities of water, electricity, roads, etc. were available. On the appraisal of all relevant factors, the reference court did not agree with the market value assessed by the Land Acquisition Officer. I

have examined the evidence and I am in full agreement with the finding that the market value fixed by L.A.O. is not fair and just.

After recording the evidence led by the parties and perusing the same, it came to the conclusion that in view of overwhelming documentary evidence on record, the market value of the acquired land has to be determined and calculated @ Rs. 5,500/- per bigha. The reference court has fixed this market value after deducting maximum extent of deduction for huge area. Before coming to this conclusion, the reference court has elaborately considered the oral and documentary evidence on relevant issue led by both the rival parties. Ultimately the reference was allowed fixing the market value of the land under acquisition @ 5,500/- per Bihga.

The record shows that while determining the market value of the land the Reference Court has also perused the judgment of the District Judge in respect of acquisition of land acquired for establishment of Forest Research Institute. Which is just opposite to the land under acquisition divided by Kaulagarh Road. The judgment was delivered on 10-6-1974 where by the market vale was determined @ Rs. 4,485/- per bigha. The notification in that case was issued on 18-11-1967, while the notification in the present case was published on 8-9-1972. i.e. almost after five years. It is but natural that the market value of the land in proximity would have considerably gone up at a span of five years. Thus, after having considered the sale transactions referred to in the impugned judgment and taking into consideration the fact that the land acquired was levelled having facilities for setting up post residential blocks, it can safely be held that the market value fixed by the reference court in the present case is quite moderate and reasonable. The record clearly shows that even in one case in respect of a land in the vicinity of the acquired land, land was sold @ Rs. 15,000/- per bigha on 2-3-1972. It finds place to mention here that even otherwise if the

average of the sale exemplars filed from both the sides is worked out, the market value of the acquired land comes slightly higher than the rate fixed by the Reference Court. Since the claimant has not come forward to file counter-claim, it is a fit case in which the award passed by the reference court is maintained in appeal.

In view of the discussion above, the appeal is devoid of merit and must fail.

The appeal is dismissed. The judgment and award dated 19.12.1983 is upheld. No order as to costs.

Amount of compensation awarded by the Reference Court, if any, deposited by the State shall be released in favour of the claimant-respondents.

(B.S. Verma, J.)

RCP